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Attorneys for Defendants
VAXGEN, INC. and LISA BROOKS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ARIA RAZBAN,

Plaintiff,

v.

VAXGEN, INC., a Delaware corporation,
LISA BROOKS, and DOES 1 through 50,
inclusive,

Defendants.

No. C 07-03136 JL

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

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1 **WHEREAS**, in the course of this litigation, disclosure may be made of information that a
2 party or non-party regards as confidential, trade secret, proprietary, personnel information and/or
3 protected by a right to privacy (hereinafter collectively referred to as "Confidential Information");
4 and

5 **WHEREAS**, the parties desire to protect against the unauthorized use or disclosure of
6 Confidential Information except as provided herein;

7 **IT IS HEREBY STIPULATED** by and between the parties hereto, through their respective
8 counsel, that the following terms and conditions shall govern the disclosure of Confidential
9 Information in this action:

10 1. All originals and copies of all documents, materials, tangible things or other
11 information or materials obtained in discovery or otherwise exchanged, disclosed or used herein
12 that contain or refer to any Confidential Information, may be designated by the party or non-party
13 producing, receiving or having an interest in the Confidential Information as "CONFIDENTIAL."
14 Any party or non-party so designating Confidential Information (the "Designating Party") shall
15 have a reasonable and good faith belief that the information so designated is Confidential
16 Information and is properly subject to the designation.

17 2. Any information designated as "CONFIDENTIAL," and all information derived
18 therefrom, shall only be disclosed as provided in Paragraph 3 below, shall be used only for the
19 purposes of this litigation, and shall not be used for any other purpose whatsoever, including,
20 without limitation, any business purpose. This paragraph shall apply to all information
21 designated by any party as "CONFIDENTIAL" whether obtained from the designating party, an
22 independent source or any person or entity of any nature not a party to this litigation.

23 3. Except as expressly provided herein, information designated as "CONFIDENTIAL"
24 shall not be disclosed, given, shown, copied, made available or communicated in any way, either
25 directly or indirectly, to any person or entity with the exception of: (a) the parties; (b) the
26 Designating Party; (c) ATTORNEYS OF RECORD for the parties (as defined in Paragraph 4 below);
27 and (d) other individuals who are requested by an ATTORNEY OF RECORD to furnish technical or
28 expert services in connection with this action or to give testimony in this action. If an ATTORNEY

1 OF RECORD desires to give, show, make available or communicate Information designated as
2 "CONFIDENTIAL" to any person other than those listed above in subparts (a) – (d) of this
3 paragraph, then said attorney shall first disclose the identity of such person to, and obtain the
4 written consent of, the ATTORNEY OF RECORD for the Designating Party. Such consent will not be
5 withheld unreasonably. Each person to whom the Information is to be given, shown, made
6 available or communicated, other than the Designating Party, ATTORNEYS OF RECORD, or other
7 individuals who are requested by an ATTORNEY OF RECORD to furnish technical or expert
8 services, must execute and deliver to the ATTORNEY OF RECORD for the Designating Party a
9 written instrument agreeing not to use or to disclose to anyone any of the contents of the
10 Information received and to be bound by the terms of this Order, in the form attached as
11 Exhibit A hereto ("Confidentiality Agreement"). Only after these conditions have been fully
12 satisfied may the Information be given, shown, made available or communicated to any person
13 other than any person listed above in subparts (a) – (d), without further order of the court in this
14 action.

15 4. As used herein, ATTORNEYS OF RECORD shall mean the Law Offices of Ira Leshin,
16 the law firm of Cooley Godward Kronish LLP, and the attorneys, paralegals, secretaries, and
17 support staff employed thereby, to the extent such individuals have a need to know the
18 information designated as "CONFIDENTIAL."

19 5. A written file shall be maintained by the ATTORNEYS OF RECORD of all
20 Confidentiality Agreements signed by persons to whom information designated as
21 "CONFIDENTIAL" has been disclosed, given, shown, made available or communicated. Said file
22 shall be made available for inspection and copying immediately upon request for such inspection
23 and copying by any ATTORNEY OF RECORD.

24 6. Information shall be designated as "CONFIDENTIAL" by the placement of a stamp
25 or marking in those words on each page of the document containing the information being so
26 designated, or by similar means on non-documentary materials.

27 7. Any party or non-party may designate excerpts and exhibits of a deposition
28 transcript as "CONFIDENTIAL" within ten (10) business days after receiving such transcript, upon

1 written notice to the non-designating ATTORNEYS OF RECORD and the court reporter who prepared
2 such transcript, and all ATTORNEYS OF RECORD shall treat each deposition transcript and/or
3 exhibit as "CONFIDENTIAL" during the 10-day review period.

4 **8.** Any court reporter who transcribes testimony in this action that a party or non-
5 party designates as "CONFIDENTIAL" (whether at a deposition or otherwise) shall agree that (a) all
6 such testimony is and shall remain confidential and shall not be disclosed except to the
7 ATTORNEYS OF RECORD and any other person who is present while such testimony is being given;
8 and (b) copies of any transcript, exhibits, reporter's notes, or any other transcription records of
9 any such testimony shall be retained in absolute confidentiality and safekeeping by such reporter
10 or shall be delivered to the ATTORNEY OF RECORD.

11 **9.** The designation by counsel for the disclosing party, receiving party or non-party of
12 any document, material or information as "CONFIDENTIAL" is intended solely to facilitate the
13 preparation and trial of this case, and such designation shall not be construed in any way as an
14 admission or agreement by any party that the designated disclosure constitutes or contains any
15 trade secret or Confidential Information.

16 **10.** Upon the final disposition of this action, each ATTORNEY OF RECORD shall
17 promptly return, at the returning party's expense, to the party from whom it obtained all items
18 marked "CONFIDENTIAL," all copies made thereof, and any and all non-privileged writings related
19 thereto, including, but not limited to, notes, analyses, memoranda or reports; provided, however,
20 that no party or ATTORNEY OF RECORD shall be required to return any document covered by the
21 attorney-client privilege and/or attorney work product doctrine.

22 **11.** If, subsequent to a party's receipt of information designated as "CONFIDENTIAL,"
23 such receiving party believes in good faith that any such information is not of a nature warranting
24 the protection afforded hereunder, such party, after meeting and conferring with the designating
25 party (or non-party), may bring on for determination a motion to challenge said designation. In
26 any such motion, the designating party shall have the burden of establishing that the designation
27 at issue is appropriate.

28 **12.** In the event that a producing party, receiving party or non-party inadvertently fails

1 to designate any information as "CONFIDENTIAL" pursuant to paragraph 1 above, said party or
2 non-party may later make such designation by written notice to the other parties within five (5)
3 business days after the designating party's discovery of its failure to so designate. The non-
4 designating parties shall take all necessary steps to ensure that the Confidential Information is
5 thereafter treated in accordance with the designation, and any such late designation shall not be
6 deemed a waiver of the confidential status of the information at issue. No person or party shall
7 incur any liability hereunder with respect to any disclosure of Confidential Information that
8 occurred prior to such person or party's receipt of written notice of a belated designation.

9 **13.** Upon the execution of this Stipulation by the parties, the parties shall have thirty
10 (30) days to designate as "CONFIDENTIAL" any Confidential Information that has been disclosed
11 or exchanged during this action prior to the execution of the Stipulated Protective Order,
12 including (without limitation) any documents that have already been produced. The parties shall
13 also have thirty (30) days to re-designate documents produced prior to the execution of this
14 Stipulation.

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1 14. This Stipulated Protective Order shall be effective from the date executed by the
2 undersigned counsel.

3 Dated: October 10, 2007

LAW OFFICES OF IRA LESHIN

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5 By: Ira Leshin
6 Ira Leshin

7 Attorney for Plaintiff ARIA RAZBAN

8
9 Dated: October 10, 2007

COOLEY GODWARD KRONISH LLP

10
11 By: Gregory C. Tenhoff
12 Gregory C. Tenhoff

13 Attorneys for Defendants
14 VAXGEN, INC. and LISA BROOKS

15 IT IS SO ORDERED.

16 Dated: _____

17 _____
18 Honorable James Larson
19 United States Magistrate Judge
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EXHIBIT A

Confidentiality Agreement

I, _____, declare under penalty of perjury under the laws of the State of California that:

1. My address is _____

2. My present employer is _____

3. My present occupation or job description is _____

I HEREBY CERTIFY AND AGREE that I have read and understand the terms of the Protective Order in the matter of *Aria Razban v. VaxGen, Inc., et al.*, United States District Court for the Northern District of California, Case No. C 07-03136 JL ("Protective Order"); that I will not use or disclose any information or materials designated as "CONFIDENTIAL" pursuant to the Protective Order except as explicitly allowed by the Protective Order; and that I agree to be bound by the terms and conditions of the Protective Order.

I understand that I am to retain all copies of any of the materials that I receive that have been designated as "CONFIDENTIAL" in a container, cabinet, drawer, room or other safe place in a manner consistent with the Protective Order, and that all copies are to remain in my custody until I have completed my assigned or legal duties, whereupon the copies are to be returned as specified in the Protective Order.

I acknowledge that the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Protective Order.

Signed by: _____

Type or Print Name: _____

Dated: _____